



SMART GROWTH AND REGIONAL COLLABORATION

August 18, 2021

Darren Cyr, Lynn City Council President  
Lynn City Hall, Room 408  
3 City Hall Square  
Lynn, MA 01901

Dear City Council President Cyr,

MAPC has reviewed the written comments on Housing Lynn prepared at your request over a 60-day period by the department heads listed below.

| #  | Name               | Title                   | Department                                    |
|----|--------------------|-------------------------|---|
| 1  | Stephen Archer     | Chief                   | Fire Department                               |
| 2  | Michael Bertino    | Chief Financial Officer | City of Lynn                                  |
| 3  | Aaron Clausen      | Principal Planner       | Mayor's Office                                |
| 4  | James Cowdell      | Executive Director      | Economic Development & Industrial Corporation |
| 5  | Leonard Desmarais  | Acting Chief            | Police Department                             |
| 6  | Michael Donovan    | Chief                   | Inspectional Services Department (ISD)        |
| 7  | Christopher Gaeta  | Director of Assessing   | Assessor's Office                             |
| 8  | Andrew Hall        | Commissioner            | Department of Public Works                    |
| 9  | George Markopoulos | City Solicitor          | Law Department                                |
| 10 | James Marsh        | Executive Director      | Department of Community Development           |
| 11 | Daniel O'Neill     | Executive Director      | Water & Sewer Commission                      |
| 12 | Janet Rowe         | City Clerk              | City Clerk's Office                           |
| 13 | Robert Stilian     | Acting Director         | Parking Department                            |
| 14 | Patrick Tutwiler   | Superintendent          | School Department                             |

On July 23, 2021, MAPC received these written comments, which, along with your letters of request, amount to more than 140 pages of text. Though our response was delayed because I was out of the office until August 3, 2021, I am now pleased to offer the below memo. This response was drafted in coordination with Housing Lynn's project partners Lynn Housing and Neighborhood Development (LHAND) and the Planning Department, as well as the plan's Steering Committee.

The memo that follows offers a response to department head comments relevant to the Housing Lynn process and plan content, addresses comments that raise questions or concerns, and references the many positive observations and remarks on Housing Lynn throughout the written comments from most department heads. Overall, this response addresses comments pertaining to the following areas:

1. MAPC
2. Housing Lynn process
3. Data and analysis
4. Development impacts



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5. Anticipated impacts on department work
6. Recommendations
7. Affordable Housing target
8. Plan adoption

I do hope this response clarifies information pertaining to Housing Lynn.

I look forward to the public hearing when the plan will be voted on by the City Council. Further, I am eager to make arrangements that allow for remote participation by MAPC staff at that meeting, should the COVID-19 pandemic still require such safety measures. As with the August 10<sup>th</sup> City Council meeting I was invited to attend, I offer MAPC's Community Engagement and IT staff for assistance with setup and facilitation that allows remote participation of MAPC staff.

Sincerely,

Karina Oliver-Milchman, AICP, Chief of Housing and Neighborhood Development, MAPC  
Housing Lynn Project Manager

Charles Gaeta, Executive Director, Lynn Housing and Neighborhood Development

Jeff Weeden, Manager of Planning & Development, LHAND

Aaron Clausen, Principal Planning Director, City of Lynn

The Housing Lynn Steering Committee



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## Memorandum

**To:** City Council President Cyr  
**From:** Karina Oliver-Milchman, AICP, Metropolitan Area Planning Council  
**On:** August 18, 2021  
**Re:** Department head comments on Housing Lynn

This memo entails a response to select comments from the department heads asked to review Housing Lynn by City Council President Cyr for impacts on their departments and work areas. It should be noted that all department heads, along with elected and appointed leaders and the general public, had the opportunity to review Housing Lynn from January 7 to January 28, 2021, during a three-week public comment period.

The following response to department head comments was drafted in coordination with Housing Lynn's project partners at Lynn Housing and Neighborhood Development (LHAND) and the Planning Department, as well as the plan's Steering Committee. It summarizes department head comments relevant to the Housing Lynn process and plan content, addresses comments that raise questions or concerns, and references the many positive observations and remarks on Housing Lynn throughout the written comments from most department heads. Overall, this response addresses comments pertaining to the following areas:

1. MAPC
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The response attributes comments from various department heads to their authors only as needed, primarily because the author's position is relevant to the content of the comment or attribution helps with clarity and understanding. For example, the department head in question is identified if his or her comment is specific to their work or if two comments are in conflict or if there are multiple comments from the same department head constitute a theme that is relevant to this discussion. Otherwise, comments are referenced anonymously.

### MAPC Role

One department head asserts that MAPC was created by Massachusetts General Law (MGL) Chapter 40B, which was enacted to address the shortage of affordable housing, concluding that

MAPC therefore has a responsibility to advance compliance with Chapter 40B. In fact, MGL Chapter 40B is expansive, with many sections. First passed in 1955, the then Legislature clearly identified its statutory “to permit a city or town to plan jointly with cities or towns to promote with the greatest efficiency and economy the co-ordinated and orderly development of the areas within their jurisdictions and the general welfare and prosperity of their citizens” (MGL c. 40B, §2). The Affordable Housing component that governs so-called 40B development was not implemented until 1969. MAPC was earlier established in 1963. Its mandate was to “...maintain the fullest cooperation with cities and towns in the district and shall render them all possible assistance in their planning activities, especially when two or more of the municipalities have common problems.” Please note that MAPC’s authorization extends to support its 101 cities and towns in its regional planning and to provide them with technical assistance as they may request. It has no legislative mandate to advance Chapter 40B. Rather, in this case, Lynn Housing and Neighborhood Development and the Mayor’s Office requested technical assistance from MAPC with a housing plan that fulfills the requirements of a Housing Production Plan but goes further in response to developments during the planning process.

### **Housing Lynn Purpose & Process**

One department head offered comments questioning why Lynn should have a plan to address Affordable Housing need when it is a regional issue. Another department head acknowledges the need for a regional response to the housing crisis, but also notes the need for Affordable Housing at the local level. Housing Lynn explains in considerable detail the broader context of the housing crisis, the features of this crisis in Lynn, the impacts on Lynners, and how Lynners will benefit from implementation of this plan. While the housing crisis is indeed regional in nature, leaders and policymakers across Greater Boston must do their part to address the needs of their residents and constituents. As Housing Lynn describes, there is considerable unmet need for Affordable Housing in Lynn: 25% of households are cost burdened and 21% are severely cost burdened (ACS, 2013-17). Moreover, there are roughly 4,500 deed-restricted Affordable Housing units for an estimated 19,840 Lynn households that qualify as low income, meaning there is 1 one unit for every 4 eligible Lynn households.

Department heads were asked to comment on their involvement with the Housing Lynn process. Most department heads describe how they were engaged and how they provided input on the plan. Other department heads say they were not invited to participate. The Housing Lynn process was robust, with considerable emphasis on stakeholder engagement. The following activities were open to all Lynn community members:

- Housing workshop at the Lynn City Summit on November 16, 2019
- Forum on housing challenges and goals on January 28, 2020
- Online open house from May 22 to June 8, 2020
- Development webinar on June 17, 2020
- Virtual forum on September 23, 2020
- Online open house from October 29 to November 15, 2020
- Public comment period from January 7 to January 28, 2021

These opportunities were widely publicized, and the project’s municipal partners also extended personal invitations to the City Council, Planning Board, various departments, and other representatives of the City.

In addition, the Housing Lynn process entailed numerous interviews and several focus groups. Department heads and staff were invited to one such focus group on February 25, 2020. The following staff and appointed/elected representatives attended and participated:<sup>1</sup>

1. Bill Bochnak, Project Coordinator, Economic Development & Industrial Corporation (EDIC)
2. Carolyn Cole, Director, Downtown Lynn Cultural District
3. Norm Cole, Zoning Board of Appeals (ZBA)
4. James Cowdell, Executive Director, EDIC
5. Jamie Cerulli, Coordinator, Inspectional Services Department (ISD)
6. Michele Desmarais, Director, Public Health Department
7. Michael Donovan, Inspectional Services Chief & Building Commissioner
8. Andy Hall, Commissioner, Department of Public Works (DPW)
9. Teri Krawitz, ZBA
10. James Marsh, Director, Department of Community Development
11. John Moberger, part-time Community Facilities Manager, Department of Community Development
12. Lisa Nerick, Deputy Director, DPW
13. Peggy Phelps, Director of Planning & Development, Lynn Housing Authority & Neighborhood Development (LHAND)
14. Keith Richard, Building Inspector, ISD
15. Lisa Tobin, Health Inspector, ISD
16. Steve Upton, Planning Board
17. Don Walker, Director of Project Operations, Department of Community Development
18. Rick Wood, ZBA
19. Son Wooten, ZBA

One department head points out that the Housing Lynn Steering Committee does not include developers, contractors, Planning Board members, landlords, City Hall department heads, or regulators in code and housing matters. This is true and by design. First, the Planning Board, as well as the City Council, are asked to vote to adopt HPPs. Having members of either on the Steering Committee would present a conflict of interest. Moreover, the Steering Committee was established so that the Housing Lynn process would be community-driven rather than City-led. Steering Committee members are residents working on issues pertaining to social justice, service provision, education, housing, economic development, and job security. They shared local housing and other knowledge throughout the planning process and ensured the process and plan content are true to Lynn and apolitical. As described above, the other stakeholders referenced in this comment letter were invited to participate in other ways. The makeup of the Steering Committee can be found on page 17 of Housing Lynn.

Further information on the public process and opportunities to engage can be found in the plan on pages 17-19.

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<sup>1</sup> Bob Stilian, Parking Director, was invited but did not attend.

## Data and Analysis

Department head comments pertaining to data and analysis focus on accuracy and/or depth. Several department heads note that the dramatic shift in the Lynn housing market in recent years and the increased demand for Affordable Housing described in the Housing Lynn plan is in alignment with their professional opinion and experience. Many department heads praise the depth of work involved in Housing Lynn. Additional positive comments were made by one department head about the methodology to select context communities. At Council President Cyr's request, this department head also considered alternative context communities and found that they, too, are proactively working to provide greater Affordable Housing through many of the strategies identified in Housing Lynn.

Other comments pertaining to data and analysis are negative. One department head asserts Housing Lynn will need to be immediately updated with 2020 Census data once it is released. This is factually incorrect. The plan, based on 2010 Census and American Community Survey (ACS) data as recent as 2017, will be viable for five years if adopted and approved by DHCD. Given that 2020 Census data was not available during this planning process, nor even now,<sup>2</sup> using it was not possible, nor is doing so a state requirement.

One department head claims the sites identified in the plan have significant environmental and logistical challenges that pose financial barriers to development. In fact, Housing Lynn analysis to identify areas with development opportunity deliberately excluded sites found to be constrained by water bodies, permanently protected open spaces, rights of way, cemeteries; flood zone, core habitat, critical landscape, a wetland within 100 feet; or environmental contamination. Publicly-owned parcels with a building on them and highly utilized sites, those unlikely to be redeveloped due to the economic value of the current land uses, were also excluded from MAPC's analysis. However, the project's municipal partners did ask that some sites not identified by MAPC's analysis be recognized for future development consideration because they had been identified through other planning processes. In as much as MAPC did not include these additional sites in its analysis, it will not comment on any development constraints they may face.

But the plan sets forth strategies developers can employ to overcome environmental or other logistical challenges by achieving economies of scale and accessing state and other resources. Most sites identified represent vacant, undervalued, or underused parcels. The purpose of the analysis was to demonstrate that there remains development opportunity in the city; identify issues that should be considered during development based on site features and geographic and demographic context; and propose appropriate housing types for different kinds of sites in different kinds of locations.

More on the analysis of development constraints and opportunities can be found on pages 57-59 and pages 76-98 of Housing Lynn, respectively.

The same department head also claims Lynn's zoning is comparable to other municipalities and not particularly permissive, as the Housing Lynn analysis found. In fact, the by-right nature of development in Lynn at the permitted densities is not common, nor is the complete absence of any parking requirements in the Downtown. Comments from

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<sup>2</sup> While some Census data was released on August 12, 2021 (6 months after Housing Lynn was finalized), much of it is not expected for another six months. ACS data is not expected until December 2021.

other department heads describe challenges with the city's current zoning that are very much in line with issues identified in the Housing Lynn plan.

## **Development Impacts**

One department head claims the City cannot accommodate the future residents of new multifamily development. The City Council has been endeavoring to attract multifamily development for years. Council President Cyr has made public statements as recently as this summer about supporting additional multifamily development. Housing Lynn does not recommend a significant departure from this objective. Instead, it serves to support the City's and Council's goals for multifamily development by offering complementary strategies around mixed-income development and Affordable Housing.

More specific comments from department heads regarding development impacts are summarized and responded to below.

### Schools

It should be noted that a member of the School Committee participated in Housing Lynn as a Steering Committee member, and that his participation led to greater analysis of school enrollment in Lynn and consideration of its relationship, if any, to housing development. In-depth analysis of school impacts can be found on pages 71-76 and 137-139 of Housing Lynn.

In his written comments, Superintendent Patrick Tutwiler notes no disagreement with the school enrollment analysis contained in Housing Lynn. According to the Superintendent, the Lynn School District has become practiced at accommodating increased enrollment and is in a strong financial position due in part to ongoing steady and stable increases in state funding under the Student Opportunity Act. His comments indicate that aspects of Housing Lynn pertaining to increasing housing stability are in alignment with the school district's objectives. Meanwhile, MAPC acknowledges that another department head states the school analysis in Housing Lynn is insufficient.

A different department head expressed concern that new housing development will result in increased school enrollment. Housing Lynn describes at length a) why housing production does not typically cause an increase in school enrollment and b) why school capacity issues in Lynn cannot be adequately addressed by preventing housing development but *should* be addressed through the schools, as the Superintendent describes in his own comments on the plan. Another department head describes an ongoing effort to fund a new school without doing a debt override through support from the Board of the Massachusetts School Building Authority.

Some department heads comments suggest school capacity issues and housing affordability should be dealt with separately, as Housing Lynn recommends. The plan states the urgent need to address limitations of the city's school buildings, and that efforts to meet housing need—an equally urgent crisis—should not be postponed. Housing Lynn also notes recent and ongoing efforts the City is engaged in related to school capacity, including successful and unsuccessful efforts to fund and build new schools.

### Parking

Robert Stilian, Acting Director of the Parking Department, states there is lack of parking in the Downtown for both residential and commercial land uses since the Council voted to remove parking requirements from the City's Zoning Ordinance. Stilian asserts that increased development has exacerbated this issue. Comments suggest increasing building

height to allow developers to provide ground-floor parking, and call for study of parking and roadway structure in the city. Housing Lynn suggests amendments to the zoning code to meeting community needs and provide public benefits like Affordable Housing in a consistent manner, including reconsidering parking requirements, building heights, dimensional regulations, and other zoning features.

### Traffic

One department head expressed concerns over traffic resulting from increased development and suggests that the MA Department of Housing and Community Development (DHCD), the entity charged with approving Housing Production Plans (HPPs), may not approve Housing Lynn for this reason. It is MAPC's experience that traffic impacts have not been the basis for DHCD disapproval of an HPP. Moreover, in general, infill housing in a mature urban area with strong public transit, limited parking, and sidewalk connectivity, as is the case in Lynn, typically produces modest auto trips that won't significantly impact traffic conditions. There is also a growing body of research focused on Affordable Housing and trip generation that indicates that lower-income households tend to own fewer cars and therefore produce more walk, bike, and transit trips (rather than auto trips). The City Council has approved significant market-rate residential development already without requirements to study or mitigate this potential issue in advance of endorsing or implementing a plan.

### Water & Sewer

According to comments from Water & Sewer Commission Executive Director Dan O'Neill, the MA Department of Environmental Protection (MassDEP) will be issuing restrictions that will lessen Lynn's allowed water volumes. Comments state that short-term solutions currently in use to accommodate increased water and sewer demand will not be able to respond to further increases. Comments express concern that systems may not be able to accommodate the planned development over the next five years.

Housing Lynn is a plan to guide the type and location of residential development, not the quantity. It calls for a percentage of new development to be Affordable Housing, not an increase in planned development. To continue to advance the City and City Council's goals of bringing new development to Lynn, regardless of whether its new market-rate or Affordable Housing, departments and leadership must pursue strategies to address water and sewer demand.

### Real and Property Tax

Comments from Christopher Gaeta, Director of Assessing, state that residential growth valuations in Lynn have increased over the past five years as a result of new residential development and conversion of outdated properties. According to comments, this has led the City's value and tax levy to increase. Another department head also comments that residential property and development of new housing plays a significant role in providing revenue to support City services.

At the same time, comments indicate that the tax burden has shifted to the residential class, as it has in the following communities: Chelsea, Malden, Revere, Salem, and Somerville. Comments state that while residential properties have generated significantly more tax during this period, Lynn has a considerably lower commercial/industrial/personal property (CIP) tax levy. Comments explain that this puts more of a burden on residential property and notes that residential property tax has gone up, as it has (to a higher extent) in the above communities. Comments express support for the Housing Lynn

recommendation to advance mixed-use development along major corridors to help address this. Comments also suggest undertaking a comprehensive plan to facilitate commercial as well as residential growth.

Another department head states that Lynn's older housing stock poses an opportunity for tax revenue. Comments indicate that improvements to these properties will increase their value, and that this increase can be captured as new growth so as not to be limited by the 2½% cap rate in the existing tax levy.

#### Tax Base

At City Council President Cyr's request, one department head provided comment on the plan's impact on the City's tax base. Comments state that Housing Lynn's 23 recommendations will not have a uniform impact on the tax base; some may exert downward pressure, others may increase the tax base, and still others may be net neutral. Comments stress that the City will have the opportunity to consider these and other impacts as part of plan implementation.

#### Tax Exemption

More than one department head notes that there are tax-exempt properties in Lynn, as in many other communities. Comments explains that these properties belong to the City, charitable organizations including housing entities, and other landowners. Principal Planner Aaron Clausen's comments state that the community benefit of Affordable Housing can outweigh this loss of revenue. Comments suggest exploring Payment in Lieu of Tax (PILOT) programs for large nonprofits to offset any tax loss, which cities like Boston and Brookline have implemented. This is a strategy worth investigating as part of Housing Lynn plan implementation and other planning processes.

Comments also state that Lynn's supply of Affordable Housing is assessed at lower than market-rate development, resulting in lesser taxes on these properties; but, importantly, he notes that this does *not* affect the City's revenue. Comments indicate that Lynn's supply of this housing is similar to that in the communities referenced above (larger than some, but less than in the cities of Chelsea and Salem).

#### Infrastructure

One department head indicates concerns about the plan's depth of analysis of municipal infrastructure meeting the requirements of DHCD. It is MAPC's position that this analysis was conducted at a depth that is anticipated to satisfy DHCD. Further analysis is welcome and should be undertaken by a consultant specializing in this area as part of the City Council's ongoing objective to facilitate increased residential development in the Lynn. As the City Council has previously approved significant development without requiring this type of analysis, clearly it may similarly do so and move forward with a vote on the Housing Lynn plan. The relevant analysis in Housing Lynn can be found on pages 68-71.

#### Municipal Finance

One department head suggests the plan will have a detrimental impact on municipal finance. Each Housing Lynn recommendation is categorized according to estimated cost (low, medium, high). In developing plan recommendations, the City's fiscal state was considered. As a result, most recommendations do not require significant local funding, such as for new full-time employees or new programs. Moreover, none of the Housing Lynn recommendations are binding and further assessment of cost should be done as part of a process to consider implementation of each. Again, the City Council has previously approved significant development already without raising a concern for this issue.

## Housing Market

One department head provides data indicating that development has continued, even during the pandemic, and that there is a strong development pipeline. This department head concludes that there remains extensive development interest in Lynn and swift action is needed to leverage private investment to generate Affordable Housing, while acknowledging that implementation of Housing Lynn recommendations will entail careful consideration by City staff and the Council.

## **Impacts on Department Work**

Many department heads point out that as a plan rather than a policy or other direct action, Housing Lynn itself does not pose impacts to their department or work. They further note that any potential impacts of plan *implementation* would be addressed through the process of developing and advancing Housing Lynn recommendations. Moreover, many department heads point out that Housing Lynn is aligned with their work objectives and implementation of specific recommendations poses positive impacts for their work. Examples of this include:

- Andrew Hall, DPW Commissioner, comments that Housing Lynn recommendations pertaining to higher density residential and mixed-use development will enable the City to lower residential road frontage, resulting in less street surface to maintain. He also notes that plan recommendations pertaining to community benefits and infrastructure improvements may improve parks, playgrounds, street, sidewalks, and utilities.
- Leonard Desmarais, Acting Chief of Police, notes the positive effects of housing development on vacant blighted buildings and land through re-use or redevelopment. He states this will result in greater safety and fewer calls to his department. He also notes the health and safety risks associated with overcrowding, which the plan aims to reduce.
- James Marsh, Executive Director of the Department of Community Development, states Housing Lynn should not adversely affect his department's ability to continue to seek funding for and implement rehabilitation and upgrades of public land, rights of way, and commercial storefronts. He anticipates continuing to assist with development in these ways.
- James Cowdell, Executive Director of Lynn Economic and Industrial Corporation, states he does not believe this plan will negatively impact commercial development. He further calls for a balance between market-rate and Affordable Housing, which he rightly states this plan can help with.

Some departments note priorities for new development and suggest strategies to accommodate growth that are beyond the scope of Housing Lynn. These ideas should be further vetted as part of implementation of Housing Lynn and other planning processes.

## **Recommendations**

The Housing Lynn process continued for 17 months, during which time the plan authors worked very closely with municipal partners at LHAND, the Planning Department, other municipal staff and leaders, the Steering Committee, and the community at large to develop recommendations. Plan recommendations resulting from this process are based on analysis of Lynn-specific data and

considerable input from Lynners. Each recommendation is written to explain the tool, what it can do for Lynn specifically, and what steps are needed to implement it in Lynn.

Of the 14 department heads who were asked to provide written comment at the request of City Council President Cyr, only a few submitted comments pertaining to plan recommendations. The following department heads made positive comments:

- Acting Police Chief Leonard Desmarais notes that affordable housing and other plan recommendations pertaining to housing stability could help reduce incidence of the kind of activities his department is called to respond to. He also notes that plan recommendations to address housing stability, safety standards, and vacant blighted properties are likely to increase public safety.
- James Marsh, Executive Director of the Department of Community Development, states that many plan recommendations incentivize development and provide tools to offset the costs of mixed-income housing. He expresses support for plan recommendations that allow the City to leverage current development interest and the market to provide community benefits. He states alignment of his department's work with many plan recommendations, particularly those that advance Goal 6 (leverage market-rate and mixed-income residential development to meet a range of housing needs, provide community benefits, and support economic development) and specifically Priority Action 1.C (amend the zoning code to establish an Equity Impact Assessment as part of residential development review), Enabling Action 1.D (amend development approvals processes to enable greater transparency, opportunities for community input, and negotiation of community benefits), and Enabling Action 1.E (amend dimensional rules to facilitate negotiation of greater community benefits).
- Aaron Clausen, Principal Planner, notes that community input and in-depth analysis of existing conditions provide a "strong and informed basis in development of plan recommendations." Generally, Clausen states Housing Lynn recommendations can be developed and implemented in a way that will not stifle future development in the city, and stresses that the plan balances the need to produce more Affordable Housing with the desire to encourage investment and market-rate development. More specifically, he provides comments on inclusionary zoning. He notes that Brockton and Quincy, which are communities that have some similar characteristics to those of Lynn, have such policies and that the following North Shore municipalities have them or are currently considering them: Beverly, Chelsea, Danvers, Everett, Lynnfield, Marblehead, Revere, and Swampscott. Clausen states that an inclusionary requirement effectively calibrated to Lynn's market conditions, as recommended in Housing Lynn, would not stifle new development in Lynn.

Though numerous, only two department heads submitted negative comments on plan recommendations. As with the above positive comments, the following comments are organized by author to provide context.

#### Michael Donovan, Chief, Inspectional Services Department

*Affordable Housing requirements.* Chief Donovan asserts uncertain Affordable Housing requirements recommended in the plan will deter development. However, Housing Lynn calls for known and consistent requirements around Affordable Housing, such as through inclusionary zoning and other tools that have become best practice in the region and beyond, in contexts and markets similar to Lynn in many ways. Further, developers—active in Lynn and beyond—were

engaged in analysis that led to these recommendations and did not convey concerns aligned with Donovan's.

*Zoning recommendations.* Donovan calls for greater specificity in the plan's zoning recommendations. Indeed, the plan states that greater specificity is needed to move forward with plan implementation of a given zoning recommendation. The plan indicates that each proposed zoning change should be accompanied by further analysis and public process to establish the specific features of the amendment.

*Priority Action 4.A: Increase transparency of municipal decision-making so that the general public can be informed and involved in processes related to housing.* Donovan states that recommendations pertaining to increased transparency in municipal decision-making are inappropriate for a housing plan. Housing Lynn explains the connection as such: "Government decision-making is most representative of the community's will when the public is informed and can actively communicate its needs. When government is not transparent, some people still have the personal networks, resources, and free time to become involved, but most people are not able to overcome barriers to access. This skews development, policymaking, and housing programming toward a narrow set of interests" (page 124).

*Priority Action 3.B: Implement rental property registration and inspection to ensure standards for building safety and landlord practices are met.* Donovan notes that the City has already implemented a rental property registration and inspection system, as Housing Lynn recommends. Housing Lynn explains that a bill requiring rental registration and inspections was passed in September 2020, during the course of this planning process. ISD will implement these new requirements, with inspections carried out every five years. The program will publish an annual report. The plan recommendation goes beyond this process to additionally recommend that the annual report is made available and accessible to the public. It also stipulates that ISD should work with planning staff or LHAND to ensure tenants know their rights and options so property improvements do not result in displacement.

*Master plan.* Donovan recommends the City undertake a Master Plan process that addresses commercial development, infrastructure, and other topic areas prior to changing residential zoning in the ways recommended by Housing Lynn. A Master Plan can be a strong tool to establish a high-level vision for a community and ensure coordination across different areas. The housing element of a Master Plan is unlikely to be as detailed or specific as Housing Lynn, but the basic findings and recommendations of Housing Lynn could be incorporated into a Master Plan since they reflect recent robust analysis and have considerable community support. If the City chooses to develop a Master Plan, it can still proceed with adoption of Housing Lynn and implementation of select recommendations while a Master Plan process unfolds.

#### George Markopoulos, City Solicitor, Law Department

*Timeliness of recommendations.* The City Solicitor expresses concerns that plan recommendations will be outdated once the 2020 Census data is released. This is likely untrue. In MAPC's experience, decennial data does not dramatically diverge from the latest ACS data, on which this plan is based. Moreover, Housing Lynn recommendations are also informed by quantitative local data and considerable qualitative data from the Lynn community. As a result, recommendations are timely and responsive to current housing needs.

*Priority Action 1.A: Adopt an Inclusionary Development Policy to facilitate mixed-income development.* The Solicitor finds no legal reason to prevent adoption of inclusionary zoning

but suggests it should be developed with input from developers and planning staff and officials. The Housing Lynn process did not entail drafting inclusionary zoning; in fact, that is a next step recommended in the plan. But the process to determine what kind of inclusionary zoning would prove financially feasible in Lynn did include consultation with planning staff and engagement of more than a dozen developers active in Lynn and beyond, including comparable markets to Lynn. The Solicitor also states the need for inclusionary zoning to offer incentives and calls for additional analysis to determine which ones will be effective in Downtown and other areas given the currently permissive zoning. Housing Lynn supports the Solicitor's statement and provides further detail and guidance on pages 107-109.

Comments also state that inclusionary zoning can be voted for with a simple majority. This is factually incorrect. Inclusionary zoning does not fall under the new Housing Choice legislation; as such, it requires a super majority for adoption. Comments from the Solicitor on additional zoning recommendations also assert that amendments can be made with a simple majority. Respectfully, this will depend upon how the zoning is drafted.

*Priority Action 1.B: Rezone to facilitate smart growth and better utilize land along major corridors through mixed-use development.* The Solicitor states there is no legal impediment to amending the Zoning Ordinance in this way. He provides comment on this recommendation pertaining to past zoning efforts and potential development impacts. He also states that this rezoning would be subject to a simple majority of the Lynn City Council. As stated above, this may not be accurate and depends upon the specific zoning requirements.

*Enabling Action 1.C: Amend the zoning code to establish an Equity Impact Assessment as part of development review for new residential projects.* The Solicitor states there is no municipality in the United States that has incorporated this tool into planning or zoning regulations. This statement ignores clear precedents from elsewhere in the country, such as Seattle since 2012, Boston since 2020, and Chicago since March of 2021. Comments imply this is a social engineering tool that determines who can move into a new development and, as such, is a violation of the Fair Housing Act. This is an untrue statement. Equity Impact Assessments focus on the likely impacts of a new development on the *current* population in that area and correspond with negotiation of mitigation of any inequitable impacts. It does not focus on future residents of a particular development. Lastly, in response to the Solicitor's concern regarding the cost of the Assessment, preparation of an Equity Impact Assessment is a cost that is generally born by developers and not the City.

*Enabling Action 1.D: Amend development approvals processes to enable greater transparency, opportunities for community input, and negotiation of community benefits.* The Solicitor finds no legal reason to prevent implementation of this recommendation. His comments assert that this recommendation effectively duplicates the inclusionary zoning recommendation. Rather than replicate the inclusionary zoning recommendation, this recommendation is broader than negotiation of community benefits like Affordable Housing. It has been designed to also increase transparency of municipal decision-making and create increased opportunity for community input on development.

The Solicitor also worries such amendments will dampen development and notes that this approach represents a change from past approaches. Indeed, it is a departure. Approaches to development must change as the market changes, and Lynn's market has been significantly stronger than it was when the current permissive zoning was adopted.

Municipalities with comparable markets routinely approach development in the manner recommended by this plan. Housing Lynn states: “Lynn can create more opportunities for public comment and negotiations, while ensuring reformed development approvals processes are not so burdensome as to limit production of housing accessible at all incomes. Potential reforms could include a formal notice and comment process for all projects and/or expanding Site Plan Review to include public input and allow the review to cover more topics” (page 112).

Lastly, the Solicitor again asserts that this rezoning would be subject to a simple majority of the Lynn City Council. As stated previously in this memorandum, what majority vote is required will depend upon the specifics of the zoning amendment.

*Enabling Action 1.E: Amend the current zoning’s development-friendly dimensional rules to facilitate negotiation of greater community benefits.* The Solicitor urges the City to exercise caution when requesting community benefits, but states there is no legal reason to prevent rezoning in this way.

*Follow-up Action 1.F: Create more housing options in lower-density areas and facilitate integration at the neighborhood level by rezoning opportunity sites identified through this plan’s analysis.* The Solicitor notes this may be a controversial recommendation but finds no legal impediment to the City Council adopting new zoning.

*Priority Action 2.A: Use tax incentives programs such as HDIP and TIF to create deeper levels of affordability beyond what can be achieved in the current market.* The Solicitor finds there is no legal reason to prevent implementation of this tool. He also states the City cannot afford to offer tax incentives like this, despite the City having previously used HDIP for the redevelopment of 23 Central Avenue into market-rate units with commercial tenants on the ground floor. Any concern that the same tool cannot be applied to mixed-income or Affordable Housing should be vetted further as part of Housing Lynn implementation.

*Priority Action 2.B(1): Adopt a policy to prioritize Affordable Housing (and emergency, transitional, and supportive housing) when disposing of public land.* The Solicitor finds no legal impediment to implementing this recommendation. His comments on this recommendation pertain to the supply and recent sale of publicly-owned land in Lynn, the effects on purchase price of conditions placed on future land use, and the processes for sale of public land below the assessed value.

*Follow-up Action 2.B(2): Establish a housing and land acquisition program.* The Solicitor finds no legal impediment to implementation of this recommendation. His comments describe processes pertaining to purchasing housing and vacant land.

*Enabling Action 2.C: Establish an Affordable Housing Trust Fund that holds and facilitates efficient access to dedicated resources for Affordable Housing production across public agencies.* The Solicitor finds no legal impediments to implementing this recommendation. He provides comment pertaining to what Affordable Housing Trust Funds are and states that the Lynn Housing Authority has served as the City’s depository and administrator of federal Affordable Housing funds. He is referring to HOME Investment Partnership Program (federal HOME) funds. A community can designate the trust as the recipient of these funds. Under MGL c.44 s.55C, more common eligible sources are Community Preservation Act funds; inclusionary zoning payments; negotiated developer fees; funds from the

general fund; tax title sales; payments from special bylaws/ordinances; cell tower lease payments; resale of Affordable Housing units as market rate, lottery/resale agent revenue; and private donations.

*Enabling Action 2.D: Use local resources and influence to support Community Development Corporations and other nonprofit developers in complementing and strengthening Neighborhood Development Associates' efforts to increase the supply of new Affordable Housing.* The Solicitor expresses concern that supporting multiple nonprofit developers dedicated to Affordable Housing is in violation of the memorandum of understanding (MoU) between the City and LHAND. It is LHAND that serves as the Housing Lynn project partner and endorses this recommendation and the plan in its entirety. Analysis of said MoU should be conducted prior to advancing this recommendation by offering the City's support to other Affordable Housing developers. There is no need to do so prior to adopting the plan from a regulatory or legal standpoint.

*Priority Action 3.A: Create an Office of Housing Stability to enforce tenant protections, monitor the rental market, and provide tenant support.* The Solicitor found no legal barriers to creating an Office of Housing Stability (OHS) for Lynn, but states that these services are either already provided or can be provided through current programs and by local or statewide nonprofit organizations that provide financial or legal guidance, advocate for legislative change, or provide financial aid. For this reason and the funding needed to support an OHS, the Solicitor opines that an OHS is duplicative and unnecessary. An OHS serves many functions beyond those provided by the Solicitor's examples. It is important to note that many of the entities identified by the Solicitor do not perform the functions of a local OHS. An OHS not only offers education to landlords and tenants on their rights and responsibilities, but it can also monitor rental and eviction activity across the city, advocate for tenants, mediate disputes, enforce tenant protection policies, and work to rehouse housing-insecure residents. An OHS could also coordinate a response to displacement, overcrowding, homelessness, and other housing issues in Lynn across public agencies. Funding an OHS could be achieved through reallocation of existing funds and changes in current department or staff responsibilities rather than additional spending.

*Priority Action 3.B: Implement rental property registration and inspection to ensure standards for building safety and landlord practices are met.* The Solicitor states that the City has already implemented a rental property registration and inspection system. Housing Lynn explains that a bill requiring rental registration and inspections was passed in September 2020, during the course of this planning process. ISD will implement these new requirements, with inspections carried out every five years. The program will publish an annual report. The plan recommendation goes beyond this to recommend the annual report be made available and accessible to the public and not just to municipal departments and governmental agencies. It also suggests ISD work with planning staff or LHAND to ensure tenants know their rights and options so property improvements do not result in displacement.

*Action 3.C(1): Establish and enforce a tenant anti-harassment policy.* The Solicitor finds no legal reason to prevent consideration of this tool. He questions whether this recommendation is appropriate for a HPP as it does not directly create or influence new housing development. Housing Lynn is not just an HPP; it is a more expansive housing plan for Lynn. As such, it establishes goals beyond housing production, including displacement

mitigation, building safety, integrated neighborhoods, and representative governance. This tool advances the displacement mitigation goal.

The Solicitor also states that local policies against tenant harassment must legally entail lesser consequences than a state or federal law. This recommendation aims to curtail landlord practices like threats, lockouts, cutting off essential services, and more. Housing Lynn states that harassment by landlords is already illegal, but enforcement is not carried out at the local level. This type of policy enables the City to be more directly involved in anti-harassment enforcement, including monitoring violations, which in and of itself can deter them.

*Follow-up Action 3.C(2): Require landlords to give sufficient notice to tenants about events that could destabilize their tenancy, including a notice of sale and a notice of rent increase.* The Solicitor provides comment on existing laws pertaining to condominium conversion and tenant leases upon sale of properties, but the majority of his comments refer to state laws governing rent control and legal precedent pertaining to property rights and eminent domain. Based on this, the Solicitor states that implementing this recommendation would likely be successfully judicially challenged by property owners. As this recommendation shares no commonalities with rent control, the relevance of citations by the Solicitor is not apparent to MAPC and therefore cannot be further responded to.

*Follow-up Action 3.C(3): Adopt Just Cause Eviction requirements.* The Solicitor states that state law regulating evictions would preempt any municipal requirements. He describes how Boston's Home Rule Petition to enact just cause eviction requirements was not approved by the state legislature. Based on this, he concludes that local just cause eviction requirements are unlawful. Additional comments refer to property rights and what constitutes a taking. The Solicitor's statement is overly broad. One unsuccessful Home Rule Petition for just cause eviction requirements is not a sweeping statement by the Legislature that all such requests will be unsuccessful. Housing Lynn does acknowledge the need for Home Rule to move forward with this recommendation. Further, advancing these requirements should entail investigation into Boston's experience requesting Home Rule along with other research and analysis.

*Priority Action 4.A: Increase transparency of municipal decision-making so that the general public can be informed and involved in processes related to housing.* The Solicitor finds no legal impediment to implementing this recommendation. The Solicitor's comments pertain to Massachusetts Open Meeting and other state laws and regulations, and note temporary changes due to the pandemic. He also opines that this is an inappropriate recommendation for a HPP and expresses skepticism that DHCD would approve a HPP with recommendations "unrelated or only minimally and/or tangentially related to housing production." First, as described above, Housing Lynn strives to not only meet the minimum requirements of a HPP, but to be a holistic housing plan for the city that goes beyond production. The plan explains the relevance of this recommendation to Housing Lynn as such: "Government decision-making is most representative of the community's will when the public is informed and can actively communicate its needs. When government is not transparent, some people still have the personal networks, resources, and free time to become involved, but most people will not be able to overcome barriers to access. This skews development, policymaking, and housing programming toward a narrow set of interests" (page 124). Second, MAPC does not expect DHCD to take issue with recommendations that do not directly drive housing production. Even if that

were the case, DHCD would flag any such issues and plan authors would have a period to address them.

*Enabling Action 4.B(1): Provide further equity and cultural competency training for current and new staff, volunteers, and elected/appointed officials.* The Solicitor finds no legal impediment to implementing this recommendation. His comments describe current diversity, equity, and inclusion (DEI) training initiatives for department heads and the hiring of a new full-time DEI Officer. He also states this recommendation is unrelated or minimally related to housing production and therefore should not be included in an HPP. As previously explained, while Housing Lynn meets all traditional requirements of a HPP it is intended to provide a more thorough and holistic housing plan for the city. As such, it includes goals and recommendations that are not limited to solely housing production. The plan takes into account those external issues which would have a direct impact on housing. Housing Lynn explains: “These trainings can help all Lynn staff and officials, particularly White officials, navigate public service in a city where people of color are in the majority and residents have varied backgrounds. While some Lynn staff have undergone equity and cultural competency training already, trainings should be expanded to include all City of Lynn staff, elected officials, board and commission members, and staff at other public agencies like LHAND and EDIC” (page 124). In this way, these trainings can ensure that city staff and leadership will take future action that considers the interests of all Lynn residents when developing housing plans, policy, and programming.

*Enabling Action 4.B(2): Make a public commitment to a greater diversity of staff, boards, committees, and commissions.* The Solicitor finds no legal impediment to implementing this recommendation. His comments state that this recommendation is unrelated or minimally and/or tangentially related to housing production and therefore should not be included in an HPP. Once again, Housing Lynn meets all requirements of a HPP, but it has been designed to be a more thorough and holistic housing plan for the city. As such, it includes goals and recommendations that are not limited to housing production. Housing Lynn explains the relevance of this recommendation as such: “The backgrounds of decision-makers and the staff who implement policy affect policy outcomes. Currently, data indicates Lynn’s government is not representative of the community. While 38% of the city is White, people of color comprise 62% of residents: 39% is Latinx, 12% is Black, 8% is Asian, 1% is Native or Indigenous, 2% is multiracial, and 1% is categorized as other (ACS, 2013-17). In addition to racial and ethnic representation, renters and public housing residents should be represented. More than half of Lynners rent (56%) and Lynn Housing & Neighborhood Development manages nearly 850 units and administers nearly 2,500 vouchers, and many more eligible Lynners are on the long wait list (ACS, 2013-17, and LHAND data). Greater representation among municipal staff and public officials may create outcomes in housing and development that are more aligned with community needs” (page 125).

The Solicitor also states that forthcoming 2020 Census data will likely affect findings pertaining to representation in municipal governance. As described earlier, decennial data does not typically dramatically diverge from the latest ACS data, on which this plan is based. Moreover, this and other plan recommendations are informed by quantitative local data and considerable qualitative data from the Lynn community. As a result, this recommendation and others are timely and responsive to current housing needs.

*Priority Action 5.A(1): Pursue a municipal right to purchase properties with expiring deed restrictions on Affordable Housing.* The Solicitor states this recommendation amounts to a taking through eminent domain, a right already exercisable by the City. As such, he argues there is no reason to include this recommendation in Housing Lynn. However, this recommendation is far more specific than the City's authority via eminent domain. It specifically enables the City to purchase expiring Affordable Housing even if the property owner intends to convert the units to market-rate housing. The Solicitor also argues this recommendation is unrealistic due to cost. Housing Lynn states that it should be coupled with funding; new ARPA resources should be considered for this purpose.

*Priority Action 5.A(2): Dedicate staff time to work with the Massachusetts Attorney General's Office to complete the receivership process.* The Solicitor states this is a lawful practice and that his office is already pursuing the recommended actions. Comments state that Assistant City Solicitor James Wellock has been working with Assistant Attorney General Monica Passeno to submit ten Lynn properties under the Neighborhood Renewal Program. However, based on his comments, it does not appear that the City has successfully completed the receivership process or appointed receivers willing to dedicate received properties for Affordable Housing. The Solicitor explains that the Northeast Housing Court informed the City and LHAND that receivers are appointed from a running list. It is unclear to MAPC whether this list includes receivers that may be inclined to deed restrict suitable properties, such as community development corporations or other nonprofit organizations. The Solicitor also states that City Council has enacted a Problem Property Ordinance to identify and coordinate a plan to respond to chronic violations of the Building and Sanitary codes, which may address the objective of property maintenance but not the objective of expanding the supply of Affordable Housing as opportunities arise.

*Follow-up Action 5.A(3): Enact a tenant Right of First Refusal (ROFR) for all rental properties.* The Solicitor argues that ROFR grants powers of eminent domain to tenants working with nonprofits and does not provide sufficient guidance to determine fair market value or just compensation. ROFR provides tenants the opportunity to purchase a building at fair market value. The methodology to determine that amount would need to be established through a process of research and analysis as part of plan implementation and the associated exploration of this and other recommendations being advanced.

*Priority Action 5.B: Prioritize Affordable Housing funding and other tools to preserve existing deed-restricted Affordable Housing and convert inexpensive housing on the market to deed-restricted units.* The Solicitor finds no legal reason to prevent implementation of this tool. He correctly states the plan recommends changing what proportion of local funding is used for this purpose. Currently, a huge portion of these funds are used for grant administration, "neighborhood stabilization," and other activities that do not directly support Affordable Housing preservation or creation. Housing Lynn recommends that funding streams like CDBG and HOME, and now the new ARPA funding, be assessed to determine whether greater funds can be used for preservation of deed-restricted housing and conversion of market-rate housing to Affordable Housing to meet immense community need.

## **Affordable Housing Target**

Principal Planner Aaron Clausen was asked to comment on Housing Lynn's Affordable Housing target of 15% of new development. His comments include an estimate of Affordable Housing production between 300 and 525 units over the five-year span of this

plan based on the development pipeline. Comments note that successfully meeting this target would result in an increase in the city's Affordable Housing stock of just under 1-1.5%. Assuming no units expire during that time, Clausen states the SHI would be between 12.5-13%. Clausen also notes that the target would not apply to every individual new multifamily housing development, but rather new housing development across the city would cumulatively meet the 15% target.

## Adoption

Many department head comments correctly point out that adopting the plan is not the same as implementing the plan, and that the latter will entail further vetting and analysis for each plan recommendation. Adopting Housing Lynn constitutes an acknowledgement of the housing crisis and its impacts on the city; a commitment to work to meet local housing needs; ongoing exploration of recommendations, each with its own process to refine and implement; and endeavoring to produce deed-restricted Affordable Housing in line with the plan target of 15% of new development.

One department head conveys concern that Housing Lynn will not be approved by DHCD for reasons pertaining to deficiencies in analysis and other areas. MAPC suggests the City Council and Planning Board proceed with an adoption vote. If adopted, the plan should then be submitted to DHCD. Subsequently, the plan authors will have an opportunity to address any deficiencies that agency finds. Waiting indefinitely to take a vote out of concern it may not be approved does a disservice to the hundreds of Lynners who gave their time and expertise to this planning process.

This same department head suggests that municipalities with adopted HPPs are required by state law to address the infrastructure effects of the plan. A plan cannot have infrastructure effects, nor can plan recommendations. A plan is an organic document containing recommendations for plan implementation. There is no requirement from the state that infrastructure be addressed as a result of plan adoption.

Finally, this department head asserts that municipalities with locally adopted HPPs are required to adhere to its "terms and goals in order to retain certification from DHCD," and specifically that municipalities with HPPs are required to annually increase the number of Affordable Housing units by 0.5% or 1% annually. This is factually incorrect. Adopting a HPP is an entirely separate process from certifying an HPP. A HPP may be certified by DHCD once it is locally adopted and approved by the state should the municipality choose to pursue this recognition. However, a municipality that pursues HPP certification is not then required to produce units as a result. Rather, certification is recognition of units already produced. Finally, a municipality would not pursue certification unless it wanted to achieve safe harbor. The City of Lynn is already in safe harbor owing to being over 10% on the state Subsidized Housing Inventory (SHI). It does not need to pursue HPP certification.

In conclusion, MAPC, LHAND, City Planning, and the Housing Lynn Steering Committee respectfully request that the City Council hold a public hearing by October 12, 2021, to vote on Housing Lynn. In addition to the department head comments, many of which are supportive of the plan, there are hundreds of documented comments of support from Lynners, a [Change.org](#) petition with 167 signatures of residents in support of the plan; and letters, op-eds, or other official positions of support from the Steering Committee, Mayor's Office, Planning Department, LHAND, EDIC, Lynn School Committee, and Lynn Housing Coalition. Moreover, there is a petition to the City Council requesting a public hearing for a

vote on the plan with 285 signatures (222 of which are certified) and public statements urging a vote by the Council from [The Item](#) and the Lynn Democratic City Committee. MAPC is prepared to answer any additional questions from the City Council at a future meeting, virtually or in-person should that be possible given the current risks of the pandemic.